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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-581

R. H. MACY & Co., INC. and BAMBERGER'S,
a division of R. H. MACY & Co., INC.,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and MICROELECTRONIC SYSTEMS CORPORATION OF AMERICA, as Real Party in Interest,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MURRAY GARTNER
Attorney for Petitioner
1185 Avenue of the Americas
New York, New York 10036
(212) 730-7373

Dated: New York, New York
October 20, 1977

Of Counsel:

EDWARD A. BRILL
BENJAMIN I. COHEN
POLETTI FREIDIN
PRASHKER FELDMAN & GARTNER
1185 Avenue of the Americas
New York, New York 10036
and
JOHN O'MEARA
DICKINSON WRIGHT MCKEAN
CUDLIP & MOON
800 First National Building
Detroit, Michigan 48226

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IN THE

Supreme Court of the United States

October Term, 1977

No.

R. H. Macy & Co., Inc. and Bamberger's,
a division of R. H. Macy & Co., Inc.,
Petitioner,

v.

United States District Court for the Eastern District of Michigan and Microelectronic Systems Corporation of America, as Real Party in Interest,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, R. H. Macy & Co., Inc.,[1] respectfully prays that a writ of certiorari issue to review the order and decision of the United States Court of Appeals for the Sixth Circuit denying petitioner's application in both cases below for a writ of mandamus to confine the *in personam* jurisdiction of the District Court within constitutional limits.

1. One of the actions below names Bambergers, an unincorporated division of R. H. Macy & Co., Inc., as defendant; effectively R. H. Macy & Co., Inc. is defendant in both actions and the single petitioner here.

Opinions Below

The opinion of the United States District Court for the Eastern District of Michigan, 434 F. Supp. 168, appears in Appendix A. The opinion of the Court of Appeals, as yet unreported, appears in Appendix B.

Jurisdiction

The order of the Court of Appeals, denying petitioner's petition for a writ of mandamus to the District Court, was entered on July 22, 1977; this Court's jurisdiction is invoked under 28 U.S.C. §§1254(1) and 2101.

Question Presented

Whether, in diversity actions, the United States District Court for the Eastern District of Michigan so departed from the accepted and usual standards of constitutional *in personam* jurisdiction by asserting jurisdiction over defendant, who neither is a citizen of nor does business in Michigan and had virtually no contacts with that State, that a writ of mandamus should have been issued by the Court of Appeals?

Statutory Provisions Involved

United States Code, Title 28:

§1651(a). Writs

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or

appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Michigan Comp. Laws Ann.:

§600.715. Same; limited personal jurisdiction

Sec. 715. The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

(2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.

(3) The ownership, use, or possession of any real or tangible personal property situated within the state.

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

Statement of the Case

These two actions involve a dispute between Microelectronic Systems Corporation of America ("Micro"), a Michigan corporation, and R. H. Macy & Co., Inc. ("Macy's"), a New York corporation and Bamberger's, an unincorporated division of Macy's. Invoking diversity jurisdiction under 28 U.S.C. §1332(a), Micro commenced separate actions in February 1976, in the United States District Court for the Eastern District of Michigan, seeking to recover a combined total of $67,823.68, plus interest, for the purchase price of electronic watches allegedly sold by Micro to Macy's and Bamberger's.

Macy's and Bamberger's jointly moved to dismiss the complaints on the ground that—under Michigan's "long-arm" jurisdiction statute, Michigan Comp. Laws Ann. §600.715, and the due process clause of the Fourteenth Amendment—there was no *in personam* jurisdiction over Macy's.

On January 31, 1977, the District Court (Feikens, D.J.) denied defendant's motion in both cases. That court also denied defendant's motion to certify the question for interlocutory appeal, pursuant to 28 U.S.C. §1292(b).

On May 27, 1977, Macy's petitioned for a writ of mandamus to the District Court ordering dismissal of these actions, on the ground of the District Court's unconstitutional assertion of jurisdiction. On July 22, 1977, the Court of Appeals denied the petition in a one-sentence opinion, citing only a decision of this Court that mandamus would not issue to reverse a district court order for particular discovery. *Kerr* v. *United States District Court,* 426 U.S. 394 (1976) (Appendix B, p. 8a).

The underlying dispute derives from Micro's alleged sale of electronic watches to Macy's and Bamberger's during the period July through September, 1975. Based on the simple and undisputed facts presented to the court in support of defendant's motions to dismiss for lack of jurisdiction, the District Court found, first, that neither Macy's nor Bamberger's "carries on a continuous and systematic part of its general business within Michigan," and that the court therefore had no general *in personam* jurisdiction over the defendants (Appendix A, p. 3a). Next, considering the question of limited jurisdiction over the defendant under the Michigan "long-arm" statute, M.C.L.A. §600.715, the court succintly summarized the events relevant to the sales transactions, none of which occurred in Michigan, as follows:

> "Macy's was first made aware of Micro's watches when Robert Waldman of Marketing East Industries Corporation, a New York corporation acting as an independent manufacturers representative, visited Macy's buyer, James Scoroposki, on behalf of Micro and proposed the sale. After further discussion between Waldman and Scoroposki, Jerry Allen, Micro's national sales manager, came from Michigan to New York and met with Waldman and Scoroposki to discuss details of the sale. Thereafter, Scoroposki gave Waldman purchase orders for standard Microelectronic watches which Waldman then forwarded to Micro. Micro never formally confirmed the orders, but it did ship Macy's the watches.[1]

1. At least one contract for sale to Bamburger's was confirmed by Jerry Allen in a letter dated July 11, 1975. Exhibit A to Joseph Stanton affidavit. [footnote by court].

• • •

> Macy's only contact with Michigan was through the ordering of goods by mail from a corporation in Michigan * * *"[2] (Appendix A, pp. 3a-4a).

The uncontested facts before the District Court, necessarily accepted by that court, additionally showed that no merchandise was delivered to or inspected by Macy's in Michigan (See ¶¶3, 5, of affidavit of Norman Merinstein, Exhibit F to Petition for Writ of Mandamus; ¶¶3, 5, of affidavit of James Scoroposki, Exhibit G to Petition for Writ of Mandamus); title did not pass until inspection of and acceptance by Macy's (in New York or New Jersey) (See Condition 8 of Exhibit H to affidavit of Norman Merinstein, Exhibit F to Petition for Writ of Mandamus); and no representative of Macy's entered Michigan or conducted any negotiations with Micro's personnel in Michigan relating to the purchase of the watches. (See ¶¶3, 5, of affidavit of Norman Merinstein, Exhibit F to Petition for Writ of Mandamus; ¶¶3, 5 of affidavit of James Scoroposki, Ex-

2. While the District Court did not rely on the finding that Macy's ordered goods by mail from the Michigan corporation as a basis for its decision, that finding is nevertheless clearly erroneous. The uncontested affidavits before the District Court show that the watches were ordered by *personal* delivery of purchase orders to the seller's own representative in *New York* and *New Jersey*, which were then forwarded by that representative to Micro. (See ¶¶3-5 of affidavits of Robert Waldman, Exhibits F and G to Petition for Writ of Mandamus; ¶8 of affidavit of Joseph Stanton, Micro's Controller, Exhibit H to Petition for Writ of Mandamus.) (References are to the record in the Court of Appeals which petitioner has requested be certified and transmitted to this Court.) The letter written by Micro's Vice President Jerry Allen on July 11, 1975, which is the basis for the court's statement that the goods were ordered by mail, is plainly *not* a confirmation of a contract of sale, as the court states, since it was written well *before* any of the purchase orders by Macy's or Bamberger's. The undisputed evidence before the District Court establishes that neither Macy's nor Bamberger's placed any orders by mail, nor even wrote to Micro concerning the purchase of the watches.

hibit G to Petition for Writ of Mandamus). In sum, it was undisputed that every significant action related to the purchase of the Micro watches occurred in either New York or New Jersey, where both the plaintiff's Vice-President and its local sales representative sought out the defendants, solicited their business, and finally consummated the sales transactions which are the basis for these actions.

Petitioner agrees with the District Court that "Michigan, like several other jurisdictions, has interpreted its long-arm statute (M.C.L.A. §600.715) as being the broadest grant of jurisdiction consistent with the constitutional requirements of due process." (Appendix A, p. 4a). In the face of the District Court's acknowledgement that Macy's and Bamberger's were "merely * * * passive out-of-state buyer[s] of an in-state product" [Appendix A, p. 5a],[3] however, the court's decision that they were subject to the court's jurisdiction exceeds the limits of constitutional power. The District Court, in effect, obliterated State lines and the constitutional limits of State power in the final paragraph of its opinion, by saying:

> "Finally, in modern business practice, companies buy and sell products in all parts of our country. Distance is no longer a factor in these relationships. In a commercial sense business activity realistically is not concerned with state boundaries. What seems to dominate these relationships is the obtaining a good product at the lowest cost that can be sold at a profit. Viewed in this way it is reasonable to exercise jurisdiction in a case such as this." (App. A, p. 7a)

3. This distinction between "passive" and "active" buyers as the touchstone for declining *in personam* jurisdiction as to the former and for asserting it as to the latter, has been stated by the Court of Appeals for the Sixth Circuit, *In-Flight Devices Corp.* v. *Van Dusen Air, Inc.*, 466 F.2d 220, 233 (6th Cir. 1972), as well as by a significant number of other courts in other circuits. See pp. 9-11, below.

Reasons for Granting the Writ

I. In these diversity cases, the District Court, and the Court of Appeals by its denial of mandamus, clearly departed from the legal standards articulated by this Court for the constitutional exercise by States of *in personam* jurisdiction as applied by virtually all other federal courts.

International Shoe Co. v. *Washington,* 326 U.S. 310 (1945), *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 (1957), and *Hanson* v. *Denckla,* 357 U.S. 235 (1958) are the leading decisions by this Court on the constraints which the due process clause of the Fourteenth Amendment imposes on the assertion by a State of *in personam* jurisdiction over foreigners. *Shaffer* v. *Heitner,* 97 S.Ct. 2569, 2580 (1977), in extending the analysis of those cases to *quasi in rem* jurisdiction, reaffirmed that "due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

The Court of Appeals for the Sixth Circuit, like the First Circuit and other courts in other circuits, in applying the principles set forth in *International Shoe* and its progeny, has distinguished between an out-of-State "passive buyer" and an "active buyer." *In-Flight Devices Corp.* v. *Van Dusen Air, Inc.,* 466 F.2d 220, 233 (6th Cir. 1972). A "passive buyer" is one "simply placing an order, accepting the seller's price and terms as stated in his product advertising and agreeing only to pay a sum upon receipt of the goods or service." An "active buyer" is one who

"vigorously negotiates, perhaps dictates, contract terms, inspects production facilities and otherwise departs from the passive buyer role." *Id.* at 233.

Since the District Court accurately characterized Macy's (and Bamberger's) as someone "who merely acted as a passive out-of-state buyer of an in-state product" (Appendix A, p. 5a), the Court of Appeals should have granted the writ of mandamus.[4] In a similar factual situation, the Court of Appeals for the First Circuit held that, under the Massachusetts "long-arm" statute, the United States District Court had no jurisdiction over two foreign corporations which had placed orders with a Massachusetts corporation, without any additional significant contacts with the forum state. *Whittaker Corp.* v. *United Aircraft Corp.,* 482 F.2d 1079, 1084-1085 (1st Cir. 1973). *Accord*: *Anderson* v. *Shiflett,* 435 F.2d 1036 (10th Cir. 1971).

The same constitutional limitation has been affirmed by virtually all the other United States District Courts that have considered the question of *in personam* jurisdiction under a State long-arm statute over a non-resident buyer whose contacts with the forum were as passive and insubstantial as those involved in this case. *United Advertising Agency, Inc.* v. *Robb,* 391 F. Supp. 626, 628-631 (M.D. North Carolina 1975); *Klein* v. *E. W. Reynolds Co., Inc.,* 355 F. Supp. 886 (S.D.N.Y. 1973); *Garrett* v. *R. H. Macy & Co., Inc.,* 360 F. Supp. 872, 877 (E.D. Tennessee 1972); *Oklahoma Publishing Co.* v. *National Sportsmen's Club, Inc.,* 323 F. Supp. 929, 930-931 (W.D. Oklahoma 1971); *McQuay, Inc.* v. *Samuel Schlosberg, Inc.,* 321 F. Supp. 902, 907 (D. Minnesota 1971); *Geneva Industries, Inc.* v. *Copeland Con-*

4. That court denied the writ not because of any differing view as to the constitutional limits of *in personam* jurisdiction, but because of its erroneous view that mandamus was not available. See Point II, below.

struction Corp., 312 F. Supp. 186, 188 (N.D. Illinois 1970); *Guardian Packaging Corp.* v. *Kapak Industries, Inc.*, 316 F. Supp. 952, 955 (D. Minnesota 1970); *Oswalt Industries Inc.* v. *Gilmore*, 297 F. Supp. 307, 313 (D. Kansas 1969); *Chassis-Trak, Inc.* v. *Federated Purchaser, Inc.*, 179 F. Supp. 780, 791 (D. New Jersey 1960). *But cf. Simpson Timber Co.* v. *Great Salt Lake Minerals and Chemicals Corp.*, 296 F. Supp. 243 (D. Oregon 1969).

Not only is the District Court's decision here, left standing by the Court of Appeals order, contrary to the above-cited federal decisions which almost unanimously hold a "passive" buyer immune from long-arm jurisdiction, it is contrary, as well, to the nearly unanimous decisions of the State courts which have considered this question. Indeed, the District Court recognized that its decision was contrary to the decisions of four State courts which held there was no *in personam* jurisdiction over an out-of-State buyer in similar circumstances (Appendix A, p. 5a, n.2).[5] *E.R. Callender Printing Co.* v. *The District Court In and For the*

5. As the District Court said (Appendix A, p. 6a) "[d]etermining the outer limits of *in personam* jurisdiction permitted by the due process clause is a federal question"; nevertheless, it found "persuasive" the decision of the Michigan Court of Appeals in *Anderson, Clayton & Co.* v. *Atlas Concrete Pipe, Inc.*, 41 Mich. App. 58, 199 N.W.2d 531 (Ct. App. 1972), that jurisdiction existed under the Michigan long-arm statute. However, neither *Anderson, Clayton & Co.* nor the other State court decision cited by the District Court, *Colony Press, Inc.* v. *Fleeman*, 17 Ill. App. 3d 14, 308 N.E. 2d 78 (Ct. App. 1974), involved "passive buyers." They involved buyers who, unlike Macy's, (1) initiated the transactions giving rise to the lawsuit by first communicating with the forum-based seller in the forum State; (2) placed their orders directly with the seller by phone and mail; and (3) did not order standard catalog items from set price lists but required the seller in each instance to deliver special orders designed to meet their particular specifications. *Colony Press, Inc.* was, in fact, distinguished on this basis in a later case which held there was no jurisdiction when an Illinois seller initiated the negotiations in California. *Artoe* v. *Mann*, 36 Ill. App. 3d 204, 343 N.E.2d 647, 649 (Ct. App. 1976).

Second Judicial District, 182 Colo. 25, 510 P.2d 889 (1973) (*en banc*); *O. N. Jonas Co.* v. *B & P Sales Corp.*, 232 Ga. 256, 206 S.E.2d 437 (1974); *NRM Corp.* v. *Pacific Plastic Pipe Co.*, 36 Ohio App.2d 179, 304 N.E.2d 248 (Ct. App. 1973); *Architectural Building Components Corp.* v. *Comfort*, 528 P.2d 307 (Okla. 1974). Our research reveals that eleven additional State courts have also held that there is no *in personam* jurisdiction over a buyer in the circumstances of Macy's and Bamberger's. *Interdyne Co.* v. *SYS Computer Corp.*, 31 Cal. App. 3d 508, 107 Cal. Rptr. 499 (Ct. App. 1973); *Artoe* v. *Mann*, 36 Ill. App. 3d 204, 343 N.E.2d 647 (Ct. App. 1976); *Rath Packing Co.* v. *Intercontinental Meat Traders, Inc.*, 181 N.W.2d 184 (Iowa 1970); *"Automatic" Sprinkler Corporation of America* v. *Seneca Foods Corp.*, 361 Mass. 441, 280 N.E.2d 423 (1972); *Branstrom & Associates, Inc.* v. *Community Memorial Hospital*, 296 Minn. 366, 209 N.W.2d 389 (1973); *M. Katz & Sons Billiard Products, Inc.* v. *G. Correale & Sons, Inc.*, 20 N.Y. 2d 903, 285 N.Y.S.2d 871 (1967); *William R. Andrews Associates* v. *Sodibar Systems of D.C., Inc.*, 28 N.C. App. 663, 222 S.E.2d 922 (Ct. App. 1976); *Neptune Microfloc, Inc.* v. *First Florida Utilities, Inc.*, 261 Or. 494, 495 P.2d 263 (1972); *Darby* v. *Superior Supply Co.*, 224 Tenn. 540, 458 S.W.2d 423 (1970); *U-Anchor Advertising, Inc.* v. *Burt*, 544 S.W.2d 500 (Texas Civil App. 1976), *aff'd*, —— S.W.2d ——, No. B-6516 slip op. (Texas July 13, 1977); *Transwestern General Agency* v. *Morgan*, 526 P.2d 1186 (Utah 1974); *cf. Misco-United Supply, Inc.* v. *Richards of Rockford, Inc.*, 215 Kan. 849, 528 P.2d 1248 (1974); *contra*: *Prentice Lumber Co.* v. *Spahn*, 156 Mont. 68, 474 P.2d 141 (1970).

The decision of the District Court that there is *in personam* jurisdiction over the defendant in both cases

crosses any reasonable line for the assertion of long-arm jurisdiction, as established by the numerous federal and State court decisions cited above. Indeed, it serves to obliterate any line at all by its focus on "modern business practice" which, in its view, is such that "[i]n a commercial sense, business activity realistically is not concerned with state boundaries." (Appendix A, p. 7a). The difficulty with that formulation is that, in a constitutional sense, the courts must be concerned with state boundaries; by failing to observe such boundaries, the District Court plainly exceeded its jurisdiction and announced a mischievous doctrine. It should be suppressed by this Court before it spawns unlimited and unwarranted extensions of the reach of State judicial process, in violation of this Court's established doctrine that exercise of *in personam* jurisdiction must be based on such contacts with the State as lead to the judgment that it is fundamentally fair to summon the defendant to that forum.

II. A writ of mandamus is the appropriate remedy for correcting an overreaching by the District Court of its jurisdiction which presages the obliteration of State lines.

The Court of Appeals denied the petition for a writ of mandamus, pursuant to 28 U.S.C. §1651(a), on the ground "that petitioners have failed to show the existence of the exceptional circumstances which will justify the granting of this extraordinary remedy." It correctly observed that a writ of mandamus is an "extraordinary remedy" and requires "the existence of * * * exceptional circumstances," but failed to see that these cases meet those tests. In the very case which the Court of Appeals

cited to justify its denial of the writ, *Kerr* v. *United States District Court*, 426 U.S. 394, 402 (1976), this Court recently said:

> "As we have observed, the writ 'has traditionally been used in the federal courts only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."' Will v. United States, [389 U.S. 90 (1967)] supra, at 95, quoting Roche v. Evaporated Milk Assn. 319 U.S. 21, 26 (1943)."

Conformably to this Court's statement of the traditional use of the writ, these are cases in which the writ should have issued. The facts, as found by the District Court, are uncomplicated and uncontradicted. Moreover, on the jurisdictional question, nothing will be added by a full trial. In view of the admitted and uncontradicted course of events, no proof of greater contact with the State of Michigan can be adduced, nor is any additional proof necessary under the District Court's decision. Under virtually every decision under the due process clause, however, the District Court, on these facts, far exceeded the constitutional limits to its derivative State jurisdiction. When such jurisdictional overreaching is so plain, it must be corrected by the Court of Appeals on petition for mandamus, or by this Court, else there is no established use for the writ in confining the District Court "to a lawful exercise of its prescribed jurisdiction."[6]

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6. This Court has not since *International Shoe* instructed the lower courts on the use of the writ of mandamus to confine those courts to their prescribed jurisdiction in diversity cases. *Cf. American Airlines* v. *Forman*, 204 F.2d 230, 232 (3d Cir. 1953); *Holub Industries, Inc.* v. *Wyche*, 290 F.2d 852, 855 (4th Cir. 1961).

Conclusion

Because the District Court unconstitutionally extended the reach of State jurisdiction in these diversity cases, and the Court of Appeals failed to confine the court to its legal jurisdiction, this Court should now issue a writ of certiorari to review the order of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

MURRAY GARTNER
Attorney for Petitioner
1185 Avenue of the Americas
New York, New York 10036
(212) 730-7373

Dated: New York, New York
October 20, 1977

Of Counsel:

EDWARD A. BRILL
BENJAMIN I. COHEN
POLETTI FREIDIN
PRASHKER FELDMAN & GARTNER
1185 Avenue of the Americas
New York, New York 10036
and
JOHN O'MEARA
DICKINSON WRIGHT MCKEAN
CUDLIP & MOON
800 First National Building
Detroit, Michigan 48226

APPENDICES

APPENDIX A

Opinion of the District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

CIVIL ACTION No. 6-70293

MICROELECTRONIC SYSTEMS CORPORATION OF AMERICA,
a Michigan corporation,

Plaintiff,

v.

BAMBERGER'S, a Division of R.H. MACY & Co., INC.,

Defendant.

CIVIL ACTION No. 6-70294

MICROELECTRONIC SYSTEMS CORPORATION OF AMERICA,
a Michigan corporation,

Plaintiff,

v.

R.H. MACY & Co., INC., a New York corporation,

Defendant.

MEMORANDUM OPINION

Plaintiff, Microelectronic Systems Corporation of America [Micro], brings these diversity actions against defend-

ants, Bamberger's, a Division of R. H. Macy &Co., Inc. and R. H. Macy & Co., Inc. [Macy's]. Plaintiff alleges that each defendant ordered and received shipments of certain electronic watches manufactured by plaintiff and that both defendants failed to remit the sums owing to plaintiff for their purchases. In each case suit is for the unpaid purchase price and is based on the alternative theories of account stated, breach of contract and tort.

Defendant, in each case, moves for dismissal on the ground that this court lacks personal jurisdiction over it. Since the substance of the arguments presented in both cases is the same, the court considers the two motions together. For convenience the court will write only of the facts as they pertain to defendant Macy's. The facts in the case against Bamberger's are substantially similar, and all the reasoning applies by analogy.

As a United States District Court sitting in Michigan this court looks to Michigan law to determine whether there is personal jurisdiction over the defendant. *Erie R.R.* v. *Tompkins,* 304 U.S. 64 (1938). Micro claims first that this court has general personal jurisdiction over Macy's under M.C.L.A. §600.711 for the reason that Macy's "carries on a continuous and systematic part of its general business within Michigan." M.C.L.A. §600.711(3). Macy's replies, by affidavit of its Vice President-Legal, that it "is not qualified to do business in the State of Michigan; maintains no offices, has no telephone listing, and no employees in the State of Michigan; and does not regularly ship goods into or advertise goods for sale in the State of Michigan." *See* Ely Kushel Affidavit. Micro does not refute these

statements but instead asks for opportunity to conduct discovery in order to demonstrate that Macy's has enough contacts with Michigan to give this court general personal jurisdiction over it. Since the burden is on the plaintiff to show the court's *in personam* jurisdiction over defendant, *Weller* v. *Cromwell Oil Co.,* 504 F.2d 927 (6th Cir. 1974), Micro's failure to controvert the defense affidavit compels a finding of no general *in personam* jurisdiction over Macy's.

Micro claims also that this court has jurisdiction over Macy's under M.C.L.A. §600.715 which gives the court limited personal jurisdiction over a foreign corporation if it transacts any business within Michigan; does or causes any act to be done or consequences to occur in Michigan resulting in an action for tort; owns, uses, or possesses any real or tangible personal property situated in Michigan; contracts to perform services or furnish materials in Michigan. Since limited personal jurisdiction extends to all causes of action arising out of the facts which give jurisdiction, the question becomes whether, *vel non,* Macy's, a New York Corporation, had sufficient contact with Michigan, as defined under M.C.L.A. §600.715, during the course of its watch purchases from the Michigan corporation, Micro.

Macy's was first made aware of Micro's watches when Robert Waldman of Marketing East Industries Corporation, a New York corporation acting as an independent manufacturers representative, visited Macy's buyer, James Scoroposki, on behalf of Micro and proposed the sale. After further discussion between Waldman and Scoroposki, Jerry

Allen, Micro's national sales manager, came from Michigan to New York and met with Waldman and Scoroposki to discuss details of the sale. Thereafter, Scoroposki gave Waldman purchase orders for standard Microelectronic watches which Waldman then forwarded to Micro. Micro never formally confirmed the orders, but it did ship Macy's the watches.[1]

Micro contends that Macy's purchase by mail of watches manufactured in Michigan constitutes the transaction of business in Michigan and gives this court jurisdiction over Macy's under M.C.L.A. §600.715(1).

Macy's only contact with Michigan was through the ordering of goods by mail from a corporation in Michigan, but it is well settled that in a proper case a single contact with the forum state not involving the physical presence of the defendant can be enough to give jurisdiction over the defendant. *In-Flight Devices Corp.* v. *Van Dusen Air, Inc.*, 466 F.2d 220 (6th Cir. 1972); *Kiefer* v. *May*, 46 Mich. App. 566 (1973); *Hadad* v. *Lewis*, 382 F. Supp. 1365 (E.D. Mich. 1974); *Mad Hatter, Inc.* v. *Mad Hatters Night Club Co.*, 399 F. Supp. 889 (E.D. Mich. 1975).

Michigan, like several other jurisdictions, has interpreted its long-arm statute (M.C.L.A. §600.715) as being the broadest grant of jurisdiction consistent with the constitutional requirements of due process. *Sifers* v. *Horan*, 385 Mich. 195 (1971); *Schneider* v. *Linkfield*, 389 Mich. 608 (1973); *Stan Sax Corp.* v. *Siefen Compounds, Inc.*, 68 Mich. App. 768 (1976). Several jurisdictions have

1. At least one contract for sale to Bamberger's was confirmed by Jerry Allen in a letter dated July 11, 1975. Exhibit A to Joseph Stanton affidavit.

concluded that the due process limitations prevent a state from taking jurisdiction over a defendant such as Macy's who merely acted as a passive out-of-state buyer of an in-state product. The United States District Court for the Eastern District of Tennessee, for example, recently held that to permit Tennessee to take jurisdiction over a foreign corporation which had ordered Tennessee goods by mail would offend the "traditional notions of fair play and substantial justice" mandated by the due process clause. *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 (1945), quoted in *Garrett* v. *R.H. Macy & Co., Inc.*, 360 F. Supp. 872, 877 (1972),[2] citing *Darby* v. *Superior Supply Co.*, 458 S.W.2d 423 (Tenn. 1970).

Michigan, in contrast, has indicated that due process considerations do not prevent taking jurisdiction over a passive buyer. In *Anderson, Clayton & Co.* v. *Atlas Concrete Pipe, Inc.*, 41 Mich. App. 58 (1972), the Michigan Court of Appeals gave full faith and credit to a Texas judgment against a Michigan corporation. The Texas court had concluded that it had jurisdiction over the passive Michigan buyer under Texas law which provided that ". . . any foreign corporation . . . shall be deemed doing business in this state by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this state . . ." Texas Rev. Stat. Art. 2031b §4. The Michigan Court of Appeals decided that the Texas statute accorded with the

2. For examples of other cases interpreting similar statutes and finding no jurisdiction over a defendant buyer in similar circumstances, *see O.N. Jonas Co., Inc.* v. *B & P Sales Corp.*, 206 S.E.2d 437 (Ga. 1974); *Architectural Building Components Corp.* v. *Comfort*, 528 P.2d 307 (Okla. 1974); *Callender Printing Co.* v. *The District Court In and For the Second Judicial District*, 510 P.2d 889 (Colo. 1973); *NRM Corp.* v. *Pacific Plastic Pipe Co.*, 304 N.E.2d 248 (Ohio App. 1973).

requirements of due process. Since the Michigan long-arm statute is considered the broadest grant of jurisdiction consistent with the requirements of due process, the logical application of *Anderson, Clayton & Co.* would allow this court to take jurisdiction over Macy's in the instant case. *See also Colony Press, Inc.* v. *Fleeman,* 308 N.E.2d 78 (Ill. App. 1974).

Determining the outer limits of *in personam* jurisdiction permitted by the due process clause is a federal question, and, therefore, the Michigan Court of Appeals decision in *Anderson, Clayton & Co.* is not controlling, although it may be persuasive. The United States Supreme Court has defined the due process limitations on obtaining *in personam* jurisdiction over a defendant in three cases: *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945); *McGee* v. *International Life Insurance Co.,* 344 U.S. 220 (1957); *Hanson* v. *Denckla,* 357 U.S. 235 (1958). From these cases the United States Court of Appeals for the Sixth Circuit has developed three criteria for determining the outer limits of constitutionally permitted *in personam* jurisdiction:

> First, the defendant must purposely avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.
>
> *Southern Machine Company* v. *Mohasco Industries, Inc.,* 401 F.2d 374, 381 (6th Cir. 1968).

See also In-Flight Devices Corp. v. *Van Dusen Air, Inc.,* 466 F.2d 220, 226 (6th Cir. 1972); *King* v. *Hailey Chevrolet Co.,* 462 F.2d 63, 67 (6th Cir. 1972); *Davis H. Elliot Co.* v. *Caribbean Utilities Co.,* 513 F.2d 1176, 1181 (6th Cir. 1975).

The court holds that it has jurisdiction over Macy's. Macy's purposely availed itself of the privilege of acting in Michigan when it entered into a contract with a Michigan corporation at least a part of which was to be performed in Michigan. The cause of action arises out of the enforcement of that contract.

Finally, in modern business practice, companies buy and sell products in all parts of our country. Distance is no longer a factor in these relationships. In a commercial sense business activity realistically is not concerned with state boundaries. What seems to dominate these relationships is the obtaining a good product at the lowest cost that can be sold at a profit. Viewed in this way it is reasonable to exercise jurisdiction in a case such as this.

Accordingly, defendants' motions to dismiss for lack of personal jurisdiction are denied. Appropriate orders may be submitted.

/s/ JOHN FEIKENS

JOHN FEIKENS
United States District Judge

Date: January 31, 1977,
Detroit, Michigan.

APPENDIX B

Opinion and Order of the Court of Appeals

No. 77-1308

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

R. H. MACY & Co., INC. and BAMBERGER'S,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, AT DETROIT,

Respondent.

Before: CELEBREZZE, PECK and LIVELY, Circuit Judges.

This matter having come before the Court on Petitioners' Petition for Writ of Mandamus and it appearing that petitioners have failed to show the existence of the exceptional circumstances which will justify the granting of this extraordinary remedy, *Kerr* v. *U.S. District Court,* 426 U.S. 394 (1976),

It is ORDERED that the Petition for Writ of Mandamus be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

JOHN P. HEHMAN, Clerk